

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 412 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
SAHID @ SAID AHMED S/O MOJKHAN

Versus

STATE OF GUJARAT

-----  
Appearance:

HL PATEL ADVOCATES for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

-----  
CORAM : MR.JUSTICE J.R.VORA

Date of decision: 24/11/1999

ORAL JUDGEMENT

#. Learned advocate Mr.Shah on behalf of Mr.H.L.Patel, advocate for the applicant and Learned A.P.P. Mr.K.P.Raval were heard. This revision is filed by the petitioner against the order passed by Judicial Magistrate First Class at Navsari in Navsari Rural Police Station, C.R.No.80/99 rejecting the application of present petitioner for the custody of the muddamal truck No.RJ 02/G-4829.

#. As per the petition, the facts of the case are that on 9.4.99 Police Sub Inspector L.C.B. Navsari detained one truck bearing Registration No.RJ-02/G-4829. There were three persons found and they were (1) Sahidkhan Ajaruddin (2) Zakirhussain Mojannav and (3) Bahadursing. On detailed investigation the truck was found loaded with Kherwood, which was banned by Indian Forest Act and hence against these persons an offence came to be registered under Sec.379, 468, 471 and 114 of the I.P.C. and under Sec.26 (1) (f) read with Sec.33 of the Indian Forest Act, being C.R.No.80/99 at Navsari. On the same day police also seized the above said truck as muddamal of the investigation.

#. The present petitioner being owner of the said truck filed an application before the Learned Magistrate Navsari, stating that he was the owner of the truck and he obtained this truck from Escord Leasing & Finance Company, Delhi. It was also stated by the petitioner in the above said application that he was in no way involved in the crime as registered against other accused. He further stated that this truck was the only means for his livelihood and therefore that truck be handed over to him during trial on bond, and notice was issued to the State on 17.6.99 by Learned Magistrate. The petitioner thereafter was heard and ultimately by the order dtd.17.7.99, the learned Magistrate came to conclusion that since the offence committed is regarding the Indian Forest Act, he had no jurisdiction to order the custody of the truck of the petitioner or pass any order regarding muddamal.

#. Being aggrieved by above said order of learned Judicial Magistrate First Class, this Criminal Revision Application is filed by the applicant.

#. Learned advocate Mr.Shah on behalf of the petitioner has vehemently argued that the Learned Magistrate had jurisdiction to deal with the muddamal and ought to have entrusted the custody of the muddamal to the petitioner. Mr.Shah urged that the order of the Magistrate declaring that he had no jurisdiction to deal with the muddamal was clearly erroneous. He has placed reliance on the decision of High Court of Bombay in the matter of Mrs.Mangal Sarjerao Bharate, Petitioner Vs. A.B.Bhangre and others, Respondents, reported in 1990 Criminal Law Journal at Page 131, wherein High Court of Bombay held that,

"vehicle cannot be seized on the ground that it

is likely to be used in commission of a forest offence- court has jurisdiction to release the vehicle and forest officer is duty bound to comply with that order."

Therefore relying on this Mr.Shah urges to allow this revision application.

#. This court on 2.9.1999 has passed an order that the Forest Officer to be satisfied after going through the papers, that whether an offence under Indian Forest Act has been committed or not. This court further directed police also to cooperate with the forest officers. This Court further directed that if the officials are satisfied that the forest offence has been committed then, they shall immediately inform the applicant and they shall pass appropriate orders as to release or confiscation of the vehicle in accordance with law at the earliest, preferably within one month from the date of this order.

#. Accordingly concerned forest officers satisfied that forest offence has been committed. The muddamal truck has been handed over to forest officer vide order no. A/Offence/Vehicle/T.8/2694-2709/99-2000 Valsad dtd.30.9.1999. Deputy Conservator Forest Mr.U.D.Singh, has come to the conclusion that the truck in question is required to be confiscated and the copy of the said order presented by the APP, is taken on record.

#. Regarding the first contention of Mr.Shah it is clear that as per the facts of the case of Bombay High Court, the tempo in question was seized on the assumption that it was likely to be used for the forest offence and when seized, no contraband article was found as per the Forest Act while in the present case, from the truck seized, contraband articles as per the Indian Forest Act were found. Therefore the decision of the Bombay High Court cited by the learned advocate is not applicable to the facts of this case.

#. Having regard to the circumstance of the case and arguments advanced it clearly appears that an offence has been committed under the Indian Forest Act. Now the truck is also confiscated by the Deputy Conservator of the Forest under the Indian Forest Act and therefore the Magistrate concerned was correct in ruling that he had no jurisdiction to deal with the muddamal and no interference in this order is required at all.

##. However, under the Indian Forest Act the applicant

has right to appeal before the Court of Sessions. He may approach against the order of the Deputy Conservator of Forest confiscating the truck to the Court of Sessions by way of appeal.

##. In these facts and circumstances of the case, this revision application is dismissed. Direct Service is permitted.

kks